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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/880,327	06/12/2001	David Arthur Stephenson	10013048-1	5780

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EXAMINER

INGBERG, TODD D

ART UNIT

PAPER NUMBER

2124

DATE MAILED: 09/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/880,327	STEPHENSON, DAVID ARTHUR	
Examiner	Art Unit		
Todd Ingberg	2124		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 25 June 2004.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) 7-20 is/are allowed.

6) Claim(s) 1 is/are rejected.

7) Claim(s) 2-6 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 10/16/01 is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____.

DETAILED ACTION

Claims 1 – 20 have been examined.

Drawings

1. The drawings filed October 16, 2001 have been accepted.

Amendment

2. The amendment filed June 25, 2004 has been entered.

Requirement For Information

3. The response to Rule 105 has been accepted.

Specification

4. The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code. Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01. Page 2 of the Specification contains a URL which must be removed. The document in question was submitted in response to Rule 105, the document is part of the record. A reference to the standard is proper the URL pointing to the web page must be removed.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 1 – 20 are rejected under 35 U.S.C. § 101. The claims fail the concrete and tangible tests. The simple correction shown below will overcome this rejection.

Claim 1

A method executing on a computer readable medium for instrumenting a software program, the method comprising:

embedding within the software program a user-defined measurement type instance based one of a plurality of predefined measurement types; and storing data structures representing the embedded user-defined measurement type instance.

Claim 7

A method **executing on a computer readable medium** for collecting data by a library from a user-defined measurement type instance embedded within a software program, the user-defined measurement type instance having a measurement type selected from among an atomic measurement type, a transaction measurement type, and a polling measurement type, and the library containing one or more additional aggregation measurement types based on the user defined measurement type, the method comprising:

receiving data states, comprising current values of variables associated with the embedded user-defined measurement type instance, generated during execution of the software program; filtering the data states; processing data contained in the data states to produce output data according to one or more measurement type instances with which the data states are associated; and packaging output data into reports.

Claim 13

A software program instrumentation system **executing on a computer readable medium** comprising: a library that manages a data structure that represents a software program with an embedded user-defined measurement type instance having a measurement type selected from among predefined measurement types and associated with variables. the library managing data structures that represent the embedded user-defined measurement type, the embedded user-defined measurement type instance, and one or more additional aggregate measurement types based on the embedded user-defined measurement type instance, the library collecting data states generated from current values of the variables associated with the embedded user-defined measurement type instance and generating reports based on the collected data states; and a data analysis routine that configures the data structures by altering values of fields within the data structures to control data collection and reporting by the library, and that receives the generated reports from the library.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by **Peri USPN**

#6,079,032 filed May 19, 1998 issued June 20, 2000.

Claim 1

Peri anticipates a method for instrumenting a software program, the method comprising: embedding within the software program a user-defined measurement type instance based one of a plurality of predefined measurement types; and storing data structures representing the embedded user-defined measurement type instance. (Peri, col 4 lines 55 – 60, allowing user to defined regions for the purpose of performing metrics such as cycle, count etc..).

Allowable Subject Matter

9. Claims 2- 6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Under the substantial evidence requirements the following claims contain allowable subject matter.

Claim 2

The method of claim 1 wherein **the user-defined measurement type instance includes a measurement type designation and associated variables.**

10. Claims 7 – 20 are allowed.

Claim 7

A method for collecting data by a library from a user-defined measurement type instance embedded within a software program, the **user-defined measurement type instance having a measurement type selected from among an atomic measurement type, a transaction measurement type, and a polling measurement type, and the library containing one or more additional aggregation measurement types based on the user defined measurement type**, the method comprising:

receiving data states, comprising current values of variables associated with the embedded user-defined measurement type instance, generated during execution of the software program; filtering the data states; processing data contained in the data states to produce output data according to one or more measurement type instances with which the data states are associated; and packaging output data into reports.

Claim 13

A software program instrumentation system comprising: a library that manages a data structure that represents a software program with an embedded user-defined measurement type instance having a measurement type selected from among predefined measurement types and associated

with variables, the library managing data structures that represent the embedded user-defined measurement type, the embedded user-defined measurement type instance, and one or more additional aggregate measurement types based on the embedded user-defined measurement type instance, the library collecting data states generated from current values of the variables associated with the embedded user-defined measurement type instance and generating reports based on the collected data states; and a data analysis routine that configures the data structures by altering values of fields within the data structures to control data collection and reporting by the library, and that receives the generated reports from the library.

Correspondence Information

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Todd Ingberg** whose telephone number is (703) 305-9775. The examiner can normally be reached during the following hours:

Monday	Tuesday	Wednesday	Thursday	Friday
6:15 – 1:30	6:15- 3:45	6:15 – 4:45	6:15-3:45	6:15-130

This schedule began December 1, 2003 and is subject to change.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Kakali Chaki** can be reached on (703) 305-9662. Please, note that as of August 4, 2003 the **FAX number** changed for the organization where this application or proceeding is assigned is **(703) 872-9306**.

Also, be advised the United States Patent Office **new address** is

Post Office Box 1450

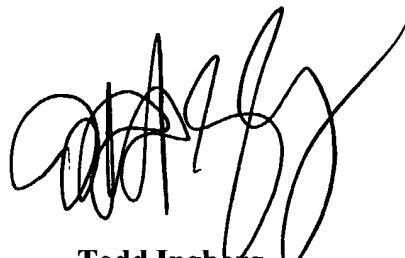
Alexandria, Virginia 22313-1450

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-9700.

Special Notice

12. Please, Note the Examiner's telephone number will change in October when the Art Unit moves to the new location. The Examiner's new telephone number will be as follows:

(571) 272-3723



Todd Ingberg
Primary Examiner
Art Unit 2124
September 4, 2004